

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

THOMAS A. CENSKE,)	
)	
Plaintiff,)	
)	
vs.)	No. CIV-17-1116-C
)	
JOHN FOX, Warden,)	
)	
Defendant.)	

ORDER ADOPTING REPORT AND RECOMMENDATION

Plaintiff brought the present action pursuant to Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971), seeking recompense for alleged violations of his constitutional rights. Specifically, Plaintiff asserts that the Defendant violated his right of access to the Courts. Consistent with the provisions of 28 U.S.C. § 636(b)(1)(B), this action was referred to United States Magistrate Judge Gary M. Purcell. Judge Purcell entered a Report and Recommendation on August 17, 2018, to which Plaintiff has objected.

The facts and law are accurately set out in the Magistrate Judge's Report and Recommendation and there is no purpose to be served in repeating them yet again. As Judge Purcell noted, the remedy provided by Bivens is to be narrowly construed and where there is an alternative remedy the Court should refrain from extending Bivens. See Simmat v. U.S. Bureau of Prisons, 413 F.3d 1225, 1231 (10th Cir. 2005). Even had the Court held Bivens available, Plaintiff's claim would fail under the doctrine of issue preclusion. As Judge Purcell noted, Plaintiff's First Amendment claims are based on

issues previously considered and rejected by other district courts. Plaintiff cannot relitigate those claims here. Finally, as Judge Purcell noted, Plaintiff's Fifth Amendment claim fails to give rise to a procedural due process claim.

Accordingly, the Court adopts, in its entirety, the Report and Recommendation of the Magistrate Judge (Dkt. No. 40), and for the reasons announced therein, DISMISSES Plaintiff's First Amendment claims with prejudice and his Fifth Amendment claim without prejudice. A separate judgment will enter.

IT IS SO ORDERED this 26th day of September, 2018.



ROBIN J. CAUTHRON
United States District Judge